

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.373 OF 2006

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Shubhalaxmi Gas Agency ...Petitioner

v/s.

The Bharat Petroleum

Corporation Ltd. ...Respondents

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Mr.R.P. Sabban for the Petitioner.

Ms.S. John i/b M.P.Savla & Co. for the Respondents.

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CORAM: D.K.DESHMUKH, J.

DATED: 5TH SEPTEMBER, 2006

P.C.:

1. By this petition filed under Section 34 of the

Arbitration & Conciliation Act the Petitioner challenges the award made by the sole arbitrator, whereby the arbitrator has held that the Petitioner is not entitled to get restoration of the Distributorship agreement dated 4-8-1996.

2. Admitted position is that the Petitioner was appointed as a Distributor of Liquified Petroleum Gas (L.P.G.) by the Respondent/Corporation, because the Petitioner is a person belonging to Scheduled Tribe. Admitted position is that one of the essential condition of the agreement is that the Petitioner himself will run the agency and except with the previous written consent of the Corporation the Distributor shall not enter into any contract agreement, contract or understanding whereby the operations of the Distributor are controlled/carried out and/or financed by any other person, firm or Company. Admitted position is that without obtaining previous written consent of the Respondent/Corporation the Petitioner executed in favour of one Shri Jaipal Govindswamy Naidu a irrevocable power of attorney. By that irrevocable power of attorney the Petitioner assigned all rights to carry on the business of the agency to the said

Jaipal Naidu, though in the agreement it was stated that he has been appointed as a manager. It was stated that the said Naidu had advanced an amount of Rs.5 lakh as financial help to the Petitioner. It is clear that by this irrevocable power of attorney, distribution itself has been assigned by the Petitioner to the said Naidu. On the basis of these admitted facts, the Respondent cancelled the Distributorship of the Petitioner.

3. The submission of the Petitioner is that under Clause 28 of the agreement it is in the discretion of the Corporation to terminate the agreement if the Distributor fails to remedy the breach within four days of the receipt of a written notice from the Corporation. According to the Petitioner, because after the receipt of notice the Petitioner cancelled the irrevocable power of attorney within four days, the Respondent- Corporation could not have terminated the agreement.

4. The submission is totally misconceived. Power under clause 28 is an additional power and the power is applicable only to such breaches which are capable of being remedied. Assigning the Distributorship for

consideration, as has been done by the Petitioner, without obtaining previous written consent of the Respondent is a breach which can not be corrected or rectified. Therefore, clause 28 is not attracted in relation to such a breach. In my opinion, a question of larger public interest is also involved. The Petitioner has been given Distributorship ignoring claims of other more deserving persons, because he belongs to Scheduled Tribe the intention was that the Petitioner himself will manage the agency. But at the first available opportunity the Petitioner accepting Rs.5 lakh from the said Naidu assigned the entire agency to him. If such conduct is permitted, it will defeat the public policy on the basis of which the concession is given to a person belonging to Scheduled Tribe. Therefore, I do not find any fault with the award of the arbitrator.

5. The learned Counsel relied on the judgment of the Supreme Court in the case of **Indian Railway Construction Co.Ltd. v/s. Ajay Kumar, AIR 2003 SC 1843**, specially the observations of the Supreme Court in relation to exercise of discretion by the Court. In my opinion, there is no question of court having any discretion in a gross matter like this. Petition

is, therefore, dismissed. However, the Petitioner is directed to pay costs of this petition to the Respondent. The costs are quantified at Rs.10,000/-.

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